UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 19-1540-cv

Caption [use short title]

DONALD J. TRUMP, et al.

v.

DEUTSCHE BANK AG, et al.

Motion for: Motion to Intervene & Unseal Judicial Records

Set forth below precise, complete statement of relief sought:

The Media Coalition seeks to intervene for the limited purpose of enforcing the public's First Amendment and common law rights of access to judicial records and to unseal the names currently redacted in Deutsche Bank's August 27, 2019 Letter to the Clerk (Dkt. 161).

MOVING PARTY: See attached Addendum **OPPOSING PARTY:** See Certification in supporting memorandum

☐ Plaintiff ☐ Defendant

☐ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: Jacquelyn N. Schell **OPPOSING ATTORNEY:**

[name of attorney, with firm, address, phone number and e-mail]

BALLARD SPAHR LLP

1675 Broadway, 19th Floor

New York, NY 10019

Court- Judge/ Agency appealed from: Southern District of New York - Ramos, J.

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
☑ Yes ☐ No (explain):

** Opposing counsel's position on motion:
☐ Unopposed ☑ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:
☐ Yes ☐ No ☑ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUCTIONS PENDING APPEAL:

Has this request for relief been made below? ☐ Yes ☐ No

Has this relief been previously sought in this court? ☐ Yes ☐ No

Requested return date and explanation of emergency:

Is oral argument on motion requested? ☐ Yes ☑ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☑ Yes ☐ No If yes, enter date: August 23, 2019

Signature of Moving Attorney:

/s/ Jacquelyn N. Schell **Date:** 9/11/2019 Service by: ☑ CM/ECF ☐ Other [Attach proof of service]

**See Certification in supporting memorandum

ADDENDUM

Moving Intervenors:

The Associated Press,

Cable News Network, Inc.,

The New York Times Co.,

POLITICO LLC and

WP Co., LLC, d/b/a the Washington Post

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DONALD J. TRUMP, *et al.*, Plaintiffs-Appellants, v. DEUTSCHE BANK AG, *et al.*, Defendants-Appellees.	Docket No. 19-1540-cv

MOTION TO INTERVENE AND TO UNSEAL JUDICIAL RECORDS

BALLARD SPAHR LLP
Jay Ward Brown
Jacquelyn N. Schell
1675 Broadway, 19th Floor
New York, NY 10019-5820
T: (212) 223-0200
F: (212) 223-1942
brownjay@balladspahr.com
schellj@ballardspahr.com

Counsel for The Associated Press, Cable News Network, Inc., The New York Times Co., POLITICO LLC and WP Co., LLC, d/b/a the Washington Post

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Other Authorities

CORPORATE DISCLOSURE

Pursuant to Federal Rule of Appellate Procedure 26.1, undersigned counsel hereby certify that:

1. The Associated Press is a news cooperative incorporated under the Not-for-Profit Corporation Law of New York and has no parents, subsidiaries or affiliates that have any outstanding securities issued to the public.

2. Cable News Network, Inc. ("CNN"), a Delaware corporation, is a wholly owned subsidiary of Warner Media, LLC, a direct, wholly owned subsidiary of AT&T Inc., a publicly traded corporation. AT&T Inc. has no parent company, and to the best of CNN's knowledge, no publicly held company owns ten percent or more of AT&T's stock.

3. The New York Times Company, a publicly traded company, has no parent company, and one publicly held corporation, Black Rock, Inc., owns approximately 10 percent of its stock.

4. POLITICO LLC is a wholly owned subsidiary of privately held Capitol News Company, LLC.

5. WP Company LLC d/b/a The Washington Post is a wholly owned subsidiary of Nash Holdings LLC, which is privately held and does not have any outstanding securities in the hands of the public.

PRELIMINARY STATEMENT

This litigation involves President Donald J. Trump's attempt to stop two banks from producing his, his family's, and his companies' financial information in response to Congressional subpoenas. Deutsche Bank AG ("Deutsche Bank") recently informed the Court that it has tax returns relating to some of the Trump-related entities or individuals, but redacted the names of these entities and/or individuals from its submission to this Court. Letter to the Clerk, August 27, 2019, Dkt. 161 ("Deutsche Bank Letter"). Through this motion, The Associated Press, Cable News Network, Inc., The New York Times Co., POLITICO LLC and WP Co., LLC, d/b/a the Washington Post (collectively, the "Media Coalition") seek to enforce the public's First Amendment and common law rights of access to judicial proceedings and the records therein, specifically, to unseal the redacted names so as to be able to inform the public which persons' or entities' tax returns are at issue in this litigation. The Media Coalition does not by this motion seek access to any underlying financial records.

This information should be released because the Deutsche Bank Letter is a judicial record, to which both the First Amendment and the common law provide a qualified right of access. The First Amendment access right can be overcome only by on-the-record findings that secrecy is necessary to protect a compelling interest and that sealing is narrowly tailored to serve that interest. Under the common law,

courts balance the public's right to information about the workings of the court against the legitimate countervailing interests of the parties, and here, that balance tips decisively in favor of the public.

To justify its redactions, Deutsche Bank points to regulatory and contractual provisions it contends guarantee the privacy of the information in question, but this contention does not withstand scrutiny. There is no basis in the record for a finding that redacting the *names* in the Deutsche Bank Letter is necessary to protect a compelling interest that would overcome the public's rights of access. There is no genuine privacy concern implicated by Deutsche Bank confirming what is already widely understood—that it has copies of certain of the President's or his affiliates' financial records—but it would set a disturbing precedent to allow redactions of such rudimentary facts to go unchallenged, particularly in a case involving a sitting president. The redacted information should be unsealed without further delay.

BACKGROUND

In the underlying action, President Donald J. Trump, his family members, and several affiliated entities (collectively, the "Trump Parties")[1] sought to prevent

[1] The Trump Parties are Donald J. Trump (in his individual capacity), Eric Trump, Ivanka Trump, Donald J. Trump, Jr., Donald J. Trump Revocable Trust, Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT

Deutsche Bank AG ("Deutsche Bank") and Capital One Financial Corporation ("Capital One") from producing financial information in response to subpoenas from two Committees of the U.S. House of Representatives (collectively, the "Committees").[2] The trial court denied the requested injunction, prompting the current interlocutory appeal.

The trial court ruled that the Committees' subpoenas "all are in furtherance of facially legitimate legislative purposes." JA136. The Committees further explained that the subpoenas relate to investigations of "serious and urgent matters concerning the safety of certain banking practices, money laundering in the financial sector, foreign influence in the U.S. political process, and the counterintelligence threats posed by foreign financial leverage." Dkt. 65 at 1. They also allege that, "Mr. Trump and his companies have repeatedly engaged in stonewalling intended to obstruct and undermine these inquiries." *Id.* at 2.

After oral argument, this Court directed Deutsche Bank and Capital One to state "whether it has in its possession any tax returns of any of the individuals or entities named or referred to (directly or indirectly) in paragraph 1 of the

---

Holdings Managing Member LLC, Trump Acquisition LLC, and Trump Acquisition, Corp.

[2] These are the Committee on Financial Services of the U.S. House of Representatives (Financial Services Committee) and Permanent Select Committee on Intelligence of the U.S. House of Representatives (Intelligence Committee).

subpoenas" and, if either bank believed "in good faith that all or any part of its response to this Order is entitled to confidentiality, it shall set forth the basis for such belief in its response." Letter from the Court, August 27, 2019, Dkt. 156 at 1. In its responsive filing, Deutsche Bank stated as follows:

> Based on Deutsche Bank's current knowledge and the results of the extensive searches that have already been conducted, the Bank has in its possession tax returns (in either draft or as-filed form) responsive to the Subpoenas for [Redacted]. In addition, the Bank has such documents related to parties not named in the Subpoenas but who may constitute 'immediate family' within the definition provided in the Subpoenas. The Bank does not believe it possesses tax returns responsive to the Subpoenas for individuals named in the Subpoenas other than those identified above.

Deutsche Bank Letter. Deutsche Bank does not state how many names are redacted or whether the redacted names belong to individuals or entities, but the letter makes clear that the redacted names were specifically referenced in the subpoenas. *Id.*

Deutsche Bank claims that its redactions are necessary for three reasons: *first*, pursuant to consumer privacy regulations promulgated pursuant to the Gramm-Leach-Bliley Act ("GLBA"), 15 U.S.C. § 6802; *second*, because of unspecified contractual obligations to its clients; and *third*, because the information relates to tax returns. None of these proffered interests, however, is sufficient to justify the redactions to this judicial record.

ARGUMENT

I. THE MEDIA COALITION SHOULD BE ALLOWED TO INTERVENE AND ENFORCE THE PUBLIC'S RIGHTS OF ACCESS.

The Media Coalition should be permitted to intervene for the limited purpose of defending the public's constitutional and common law rights of access to the judicial record at issue. Courts have widely recognized that the press is a proper party to assert the public's access rights, and that intervention is the proper procedure for vindicating that right. *See, e.g.*, *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596, 609 n.25 (1982); *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 118-19 (2d Cir. 2006) (summarizing cases approving of press intervention). As the Supreme Court squarely has held, when a court limits the public's access to its proceedings, including the record thereof, "representatives of the press and general public 'must be given an opportunity to be heard on the question of their exclusion.'" *Globe Newspaper*, 457 U.S. at 609 n.25 (citation omitted)). Intervention is equally appropriate at the appellate level to vindicate the public's access rights. *See, e.g.*, Motion Order, *Roe v. United States*, Nos. 10-2905-cr & 11-479-cr, (2d Cir. Apr. 10, 2017), Dkt. 409 (granting Forbes Media LLC and Richard Behar's motion to intervene and challenge sealing). As the Media Coalition here seeks to enforce its members' and the public's rights of access to a judicial record in this action, intervention is appropriate and should be granted.

II. THE PUBLIC'S FIRST AMENDMENT AND COMMON LAW RIGHTS OF ACCESS TO THE JUDICIAL RECORDS AT ISSUE CANNOT BE OVERCOME.

The public has a presumptive, albeit qualified, right of access to judicial documents that is particularly urgent in this case given the issues under investigation by Congress and the separation of powers questions raised by this proceeding. This qualified right, which arises under both the First Amendment and the common law, requires the unsealing of the names in the Deutsche Bank Letter.

A. The First Amendment Provides A Right Of Access To Judicial Documents, Including The Deutsche Bank Letter.

The First Amendment to the U.S. Constitution provides an affirmative, enforceable right of public access to both criminal and civil court proceedings. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980) ("We hold that the right to attend criminal trials is implicit in the guarantees of the First Amendment[.]" (footnote omitted)); *see also Craig v. Harney*, 331 U.S. 367, 374 (1947) ("A trial is a public event. What transpires in the court room is public property."); *see also Press-Enter. Co. v. Super. Ct.* ("*Press-Enter. II*"), 478 U.S. 1, 9 (1986) (same); *N.Y. Civil Liberties Union v. N.Y.C. Transit Auth.*, 684 F.3d 286, 298 (2d Cir. 2012) (recognizing right of access not only to trials but to all "related proceedings and records").

The right of access ensures that courts "have a measure of accountability" and promotes "confidence in the administration of justice"—goals that cannot be

accomplished "without access to testimony and documents that are used in the performance of Article III functions." *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995) ("*Amodeo II*"). "Openness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system." *Press-Enter. Co. v. Super. Ct.* ("*Press-Enter. I*"), 464 U.S. 501, 508 (1984); *see also Westmoreland v. CBS*, 752 F.2d 16, 22 (2d Cir. 1984) ("Underlying that First Amendment right of access 'is the common understanding that a major purpose of that Amendment was to protect the free discussion of governmental affairs.'" (quoting *Globe Newspaper*, 457 U.S. at 604)).

"A 'judicial document' or 'judicial record' is a filed item that is 'relevant to the performance of the judicial function and useful in the judicial process." *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 139 (2d Cir. 2016) (per curiam) (quoting *Lugosch*, 435 F.3d at 119). Put differently, documents are "judicial records" if they "would reasonably have the tendency to influence a district court's ruling on a motion or in the exercise of its supervisory powers." *Brown v. Maxwell*, 929 F.3d 41, 49 (2d Cir. 2019). Courts also consider the "experience and logic" test, which "requires the court to consider both whether the documents 'have historically been open to the press and general public' and

whether 'public access plays a significant positive role in the functioning of the particular process in question.'" *Lugosch*, 435 F.3d at 120 (citation omitted).

The information at issue here—information submitted for the Court's consideration in determining the merits of the appeal—is analogous to documents submitted for consideration on a motion for summary judgment. This Circuit previously has held that the First Amendment (and common law) right of access attaches to documents like these, "which are submitted to, and accepted by, a court of competent jurisdiction in the course of adjudicatory proceedings," regardless of how the court ultimately rules on the motion or whether the court actually considers the documents. *Id.* at 122 (quoting *FTC v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 409 (1st Cir. 1987) (First Circuit reaches same conclusion)). Here, the Court expressly requested the information in the Deutsche Bank Letter for the purpose of ruling on this appeal or at least "exercis[ing] its supervisory powers" over the action, and Deutsche Bank provided it for the Court's consideration in the course of these adjudicatory proceedings. *See Brown*, 929 F.3d at 49. Thus, the Letter and the information it includes are unquestionably "judicial documents" to which the First Amendment access right applies.

Where, as here, the public's First Amendment right of access attaches to a judicial document, courts may seal those documents in whole or, as here, in part, only upon making specific, on-the-record findings that the party seeking closure

or sealing has carried its burden of justifying the denial of public access. *Press-Enter. II*, 478 U.S. at 13-14 (specific, on-the-record findings required to close hearing); *Bernstein*, 814 F.3d at 141 ("[f]inding that a document is a judicial document triggers a presumption of public access, and requires a court to make specific, rigorous findings before sealing the document or otherwise denying public access" (quoting *Newsday LLC v. Cty. of Nassau*, 730 F.3d 156, 167 n.15 (2d Cir. 2013))); *ABC, Inc. v. Stewart*, 360 F.3d 90, 106 (2d Cir. 2004) (party seeking closure bears burden of demonstrating that right of access is overcome). At bottom, courts must make specific, on-the-record findings that the party seeking closure has met the Supreme Court's four-pronged test by demonstrating:

- *first*, that there is a substantial probability that allowing access is likely to harm a compelling governmental interest, *Press-Enter. II*, 478 U.S. at 13-14;

- *second*, that no reasonable alternative to a limitation on access can adequately protect the threatened interest, *id.*;

- *third*, that any limitation is narrowly tailored such that it is no broader than necessary to protect the threatened interest, *id.*; if narrower limitations exist—*e.g.*, redacting portions of records and partially closing hearings rather than blanket sealing and closure, they must be employed, *Press-Enter. I*, 464 U.S. at 512-13; and

- *fourth*, that any restriction will be effective in protecting the threatened interest, *Press-Enter. II*, 478 U.S. at 14.[3]

[3] Similarly, before Courts authorize sealing of judicial records subject to the public's common law right of access, they must weigh the presumption of access against competing considerations. *Lugosch*, 435 F.3d at 120.

Because neither Deutsche Bank nor the government has or can make this showing with respect to the redacted information in question, the Court should order the immediate filing of an unredacted copy of the Letter.

B. Deutsche Bank Has Not Identified Any Compelling Interest Sufficient To Overcome The Public's First Amendment Right Of Access.

Deutsche Bank has not carried its burden of showing a substantial risk to a compelling interest if the names at issue are placed in the public record of this proceeding. *See Press-Enter. II*, 478 U.S. at 13-14. The Supreme Court has stressed that a denial of access is permissible only when "essential to preserve higher values." *Press-Enter. I*, 464 U.S. at 510 (citation omitted). "Conclusory assertions" and the mere "possibility" of harm are insufficient. *See Press-Enter. II*, 478 U.S. at 15 ("The First Amendment right of access cannot be overcome by the conclusory assertion that publicity might deprive the defendant of" right to fair trial).

While privacy considerations may in some limited circumstances qualify as a compelling interest, "privacy and reputational concerns typically don't provide sufficient reason to overcome a qualified First Amendment right of access." *United States v. Loughner*, 769 F. Supp. 2d 1188, 1196 (D. Ariz. 2011). Further, there is no compelling interest in protecting the "privacy" of facts that are already public. *Wash. Post v. Robinson*, 935 F.2d 282, 291-92 (D.C. Cir. 1991); *Va. Dep't*

of State Police v. Wash. Post, 386 F.3d 567, 579 (4th Cir. 2004); *Loughner*, 769 F. Supp. 2d at 1196.

Moreover, many, if not all, of the parties whose financial information is at issue are people who have a diminished privacy interest because they (or their principals, in the case of the business entities) voluntarily sought public office or positions in a hotly contested presidential campaign. *See In re Application of N.Y. Times For Access to Certain Sealed Records*, 585 F. Supp. 2d 83, 93 n.14 (D.D.C. 2008) ("injury to official reputation is an insufficient reason for repressing speech that would otherwise be free" (quoting *In re McClatchy Newspapers, Inc.*, 288 F.3d 369, 374 (9th Cir. 2002))). For example, federal prosecutors involved in convicting a sitting U.S. Senator on corruption charges that were later vacated because of prosecutorial misconduct did not have a privacy interest in sealing a report about their misdeeds. *In re Special Proceedings*, 842 F. Supp. 2d 232, 246 (D.D.C. 2012) (in allowing access to records, noting that "the identity of the subjects was known from the outset of the investigation, the matters under investigation were largely known to the public from the outset and arose from the subject attorneys' conduct during the proceedings in a highly-publicized criminal trial").

Here, Deutsche Bank has pointed to three general privacy concerns but done little to establish that the concerns apply to the names redacted from the Letter and

even less to explain why the concerns, even if otherwise valid, would rise to the level of a compelling interest.

First, Deutsche Bank claims that the GLBA, specifically 16 C.F.R. § 313.3, prohibits disclosure of the names because disclosure would reveal Deutsche Bank clients or indicate the nature of Deutsche Bank's business with them. Dkt. 161. Deutsche Bank, however, has not shown that this rule applies in this circumstance. As an initial matter, the cases cited by Deutsche Bank do not involve the public's rights of access to judicial pleadings. *See Individual Reference Servs. Grp. v. FTC*, 145 F. Supp. 2d 6, 40 (D.D.C. 2001) (involving challenge to GBLA rule-making procedures under Administrative Procedure Act), *aff'd sub nom. Trans Union LLC v. FTC*, 295 F.3d 42 (D.C. Cir. 2002); *Martino v. Barnett*, 595 S.E.2d 65, 72 (W. Va. 2004) (requiring production of GBLA protected information in personal injury discovery dispute); *Alpha Funding Grp. v. Cont'l Funding, LLC*, 17 Misc. 3d 959, 968-69 (Sup. Ct. N.Y. Cty. 2007) (resolving discovery dispute, under New York state law, over loan and tax return information not relevant to case). In addition, the GBLA and regulations cited are limited to individual consumers, not commercial clients, *see* 16 C.F.R. § 313.1(b), but the Bank has not alleged that the redacted names belong exclusively to individuals, as opposed to business entities or some combination of the two. While the GBLA might apply to limit dissemination by Deutsche Bank of individuals' names and addresses in limited

circumstances not applicable here,[4] it expressly *excludes* names and information that are "publicly available." 16 C.F.R. § 313.3(n)(3)(ii); *see also In re Special Proceedings*, 842 F. Supp. 2d at 246. Here, the persons and entities that are the objects of the subpoena publicly announced themselves, and their status as Deutsche Bank clients, by filing this lawsuit to enjoin Deutsche Bank's production of their financial records. Deutsche Bank has cited no law to support its contention that the "nature of the business" with the individuals or entities would be protected by the GBLA, much less explained why protecting this publicly available information when contained in a judicial record would be a compelling government interest.

Even if the GBLA otherwise required non-disclosure of the names in this instance—and it plainly does not—the Supreme Court has repeatedly ruled that First Amendment interests supersede statutory confidentiality provisions, unless the provisions are narrowly tailored to protect a compelling interest. *See, e.g.*, *Globe Newspaper*, 457 U.S. at 610-11 (invalidating state statute presumptively excluding press and public from courtroom during testimony of underage victim of

[4] The regulation cited by Deutsche Bank includes in the definition of "nonpublic personal information" "any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information (that is not publicly available) such as account numbers." 16 C.F.R. § 313.3(n)(3)(i).

sexual offense); *see also Florida Star v. B.J.F.*, 491 U.S. 524 (1989) (invalidating state statute criminalizing publication of name of victim of sexual offense on First Amendment grounds).

Second, Deutsche Bank's allusion to contractual obligations "often" included in its customer contracts does nothing to establish that any specific contract actually prohibits it from disseminating the names in question in the first instance, and such speculation by Deutsche Bank that a contractual term *might* exist is utterly insufficient to meet its burden. *See ABC, Inc.*, 360 F.3d at 106 ("The burden is heavy on those who seek to restrict access to the media, a vital means to open justice."). But in any event, even if Deutsche Bank had identified a contractual promise of confidentiality actually applicable to one of the persons or entities implicated, a contractual obligation to keep information private cannot overcome a constitutional right of access. *See, e.g.*, *Bernstein*, 814 F.3d at 131-32 (unsealing pleadings in civil case despite parties' settlement agreement conditioned on maintenance of records under seal).

Third, Deutsche Bank's assertion that tax return information receives special protection is similarly insufficient. While the privacy interests implicated by personal financial information may, in some circumstances, justify limited redactions, Deutsche Bank provides no support for the proposition that *names* may be redacted from a judicial record simply because they are the names of persons or

entities who filed tax returns. Indeed, not even the cases Deutsche Bank cites support this proposition. *See Prescient Acquisition Grp. v. MJ Publ'g Tr.*, 487 F. Supp. 2d 374, 376-77 (S.D.N.Y. 2007) (after making required findings on record, sealing *only* two blank checks, which included signature examples and therefore posed substantial risk of financial fraud); *Solomon v. Siemens Indus., Inc.*, 8 F. Supp. 3d 261, 285-87 (E.D.N.Y. 2014) (after making required findings on record, sealing tax returns themselves, where summaries of information were on public record elsewhere and rationale for filing tax returns in record was dubious).

As Deutsche Bank has not identified a substantial risk to a compelling government interest, it cannot meet its burden to overcome the public's right of access, and the redacted names should be unsealed forthwith.

C. The Public's Common Law Right Of Access Also Requires Release Of The Redacted Names.

In addition to the First Amendment right of access, courts "have long recognized the 'general right to inspect and copy public records and documents, including judicial records and documents.'" *Bernstein*, 814 F.3d at 142 (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978)). This common law right of access "is said to predate the Constitution." *United States v. Amodeo*, 44 F.3d 141, 145 (2d Cir. 1995).

The presumptive common law right of access attaches to documents that are "presented to the court to invoke its powers or affect its decisions."

Bernstein, 814 F.3d at 142 (comparing summary judgment pleadings, which "only the most compelling reasons can justify sealing" with discovery documents "passed between the parties" but not presented to court, and which thus often "play no role in the performance of Article III functions" (internal marks and citations omitted)). The weight of the common law presumption may vary, "depending on two factors: (a) 'the role of the material at issue in the exercise of Article III judicial power' and (b) 'the resultant value of such information to those monitoring the federal courts.'" *Newsday*, 730 F.3d at 165 (quoting *Amodeo II*, 71 F.3d at 1049). The Court must then balance these factors against "countervailing interests favoring secrecy." *Id.*

The information in the Deutsche Bank Letter was specifically requested by, and provided to, the Court as part of its decision-making process, invoking a strong common law presumption of access. *See Bernstein*, 814 F.3d at 142. And the public interest in these materials, and this case more broadly, could not be higher. The question of which specific entities or individuals—from among a group whose identities *are already publicly known*—will be the subject of this Court's adjudication is of substantial value to those monitoring the Court and the execution of its duties in this case, litigation commenced by the President to prevent Congress from obtaining financial documents from certain persons and entities closely associated with him, thereby raising important questions about

separation of powers. *See Newsday*, 730 F.3d at 165. The broader Congressional investigation is looking into, among other things, attempts by foreign nations to influence U.S. citizens, including the President, during his campaign for office or since. *See, e.g.*, *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971) ("[I]t can hardly be doubted that the constitutional guarantee [of free speech] has its fullest and most urgent application precisely to the conduct of campaigns for political office.").

The ultimate decision in this case and the information requested by the Court to reach its decision are of extraordinary public importance, and as demonstrated above, Deutsche Bank has not identified any valid, applicable privacy interest, much less demonstrated why any such personal privacy interest would outweigh the exceptional public interests at stake. Thus, the common law right of access also requires that the names redacted from the Deutsche Bank Letter be unsealed forthwith.

CONCLUSION

For the reasons stated above, the Media Coalition respectfully requests that the Court (i) grant their motion to intervene in this action for the limited purpose of enforcing the public's right of access to judicial proceedings and records, and (ii) unseal the information redacted by Deutsche Bank in its August 27, 2019, letter to the Court, without further delay.

Dated: September 11, 2019

Respectfully submitted,

BALLARD SPAHR LLP

/s/ Jacquelyn N. Schell

Jay Ward Brown
Jacquelyn N. Schell
1675 Broadway, 19th Floor
New York, NY 10019-5820
T: (212) 223-0200
F: (212) 223-1942
brownjay@balladspahr.com
schellj@ballardspahr.com

CERTIFICATION PURSUANT TO L.R. 27.1(b)

Pursuant to Local Rule 27.1(b), the undersigned counsel certifies that they have notified opposing counsel of their intention to move to intervene and to unseal the records at issue. Opposing counsel responded as follows:

- The Trump Parties take no position as to the Media Coalition's motion to intervene but reserve all rights to object or respond to the motion to unseal.
- Deutsche Bank does not object to the Media Coalition's motion to intervene but objects to the motion to unseal. Deutsche Bank reserves the right to file a response.
- The Committees take no position as to the Media Coalition's motion to intervene. The Committees take no position as to the motion to unseal, to the extent the named entities or individuals are parties to this litigation, but oppose the motion to unseal, to the extent the named entities or individuals are not parties.
- The Media Coalition did not receive a response from Capital One prior to filing.

Dated: September 11, 2019

Respectfully submitted,

BALLARD SPAHR LLP

/s/ Jacquelyn N. Schell

Jay Ward Brown
Jacquelyn N. Schell
1675 Broadway, 19th Floor
New York, NY 10019-5820
T: (212) 223-0200
F: (212) 223-1942
brownjay@balladspahr.com
schellj@ballardspahr.com